

1 TRINETTE G. KENT (State Bar No. 222020)  
2 10645 North Tatum Blvd., Suite 200-192  
3 Phoenix, AZ 85028  
4 Telephone: (480) 247-9644  
5 Facsimile: (480) 717-4781  
6 E-mail: tkent@lemborglaw.com

7 Of Counsel to  
8 Lemberg Law, LLC  
9 A Connecticut Law Firm  
10 1100 Summer Street  
11 Stamford, CT 06905  
12 Telephone: (203) 653-2250  
13 Facsimile: (203) 653-3424

14 Attorneys for Plaintiff,  
15 Robert Ewell

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA

18 Robert Ewell,

19 Plaintiff,

20 vs.

21 Performant Recovery, Inc.; and DOES 1-  
22 10, inclusive,

23 Defendants.

Case No.: 4:14-cv-4096

**COMPLAINT FOR DAMAGES**

**1. VIOLATION OF FAIR DEBT  
COLLECTION PRACTICES ACT,  
15 U.S.C. § 1692 *ET. SEQ.***

**JURY TRIAL DEMANDED**

1 For this Complaint, Plaintiff, Robert Ewell, by undersigned counsel, states as  
2 follows:  
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt  
6 Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA") in their illegal efforts  
7 to collect a consumer debt.  
8

9 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

10 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that  
11 Defendants transact business here and a substantial portion of the acts giving rise to  
12 this action occurred here.  
13

14 **PARTIES**

15 4. Plaintiff, Robert Ewell (hereafter "Plaintiff"), is an adult individual  
16 residing in Woodbridge, Virginia, and is a "consumer" as the term is defined by 15  
17 U.S.C. § 1692a(3).  
18

19 5. Defendant, Performant Recovery, Inc. ("Performant"), is a California  
20 business entity with an address of 333 N Canyons Pkwy Suite 100, Livermore,  
21 California 94551-9480, operating as a collection agency, and is a "debt collector" as  
22 the term is defined by 15 U.S.C. § 1692a(6).  
23

24 6. Does 1-10 (the "Collectors") are individual collectors employed by  
25 Performant and whose identities are currently unknown to Plaintiff. One or more of  
26  
27  
28

1 the Collectors may be joined as parties once their identities are disclosed through  
2 discovery.

3  
4 7. Performant at all times acted by and through one or more of the  
5 Collectors.

6  
7 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

8 **A. The Debt**

9 8. Plaintiff allegedly incurred a financial obligation (the “Debt”) to an  
10 original creditor (the “Creditor”).

11  
12 9. The Debt arose from services provided by the Creditor which were  
13 primarily for family, personal or household purposes and which meets the definition  
14 of a “debt” under 15 U.S.C. § 1692a(5).

15  
16 10. The Debt was purchased, assigned or transferred to Performant for  
17 collection, or Performant was employed by the Creditor to collect the Debt.

18  
19 11. Performant attempted to collect the Debt and, as such, engaged in  
20 “communications” as defined in 15 U.S.C. § 1692a(2).

21 **B. Performant Engages in Harassment and Abusive Tactics**

22  
23 12. In or around August of 2014, Performant contacted Plaintiff’s mother in  
24 an attempt to collect the Debt owed by Plaintiff.

25  
26 13. Plaintiff spoke with Performant on or about August 18, 2014. During  
27 that conversation, Performant advised Plaintiff that if he did not provide his banking  
28

1 information to Performant by 5:00 p.m. on August 20, 2014, then Performant would  
2 automatically begin garnishing his wages.

3  
4 14. Performant's above statement was false and misleading because  
5 Performant had no present legal ability to automatically garnish Plaintiff's wages  
6 without first providing Plaintiff with the proper notices as required by law.  
7

8 15. Performant failed to send Plaintiff a 30-day letter prior to threatening  
9 garnishment.

10 16. Furthermore, Performant failed to send Plaintiff a written letter within  
11 five (5) days of the initial communication with Plaintiff, as required by law.  
12

13 **COUNT I**  
14 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**  
15 **15 U.S.C. § 1692, et seq.**

16 17. Plaintiff incorporates by reference all of the above paragraphs of this  
17 Complaint as though fully stated herein.

18 18. Defendants communicated with individuals other than Plaintiff, the  
19 Plaintiff's attorney, or a credit bureau, in violation of 15 U.S.C. § 1692c(b).  
20

21 19. The Defendants' conduct violated 15 U.S.C. § 1692d in that Defendants  
22 engaged in behavior the natural consequence of which was to harass, oppress, or  
23 abuse the Plaintiff in connection with the collection of a debt.  
24

25 20. Defendants used false, deceptive, or misleading representation or means  
26 in connection with the collection of a debt, in violation of 15 U.S.C. § 1692e.  
27  
28

1           21. Defendants made false and misleading representations regarding the  
2 character, amount or legal status of the debt, in violation of 15 U.S.C. § 1692e(2).  
3

4           22. Defendants threatened Plaintiff with garnishment if the debt was not  
5 paid, in violation of 15 U.S.C. § 1692e(4).  
6

7           23. Defendants' conduct violated 15 U.S.C. § 1692e(5) in that Defendants  
8 threatened to take action that could not legally be taken or was not intended to be  
9 taken.  
10

11           24. Defendants employed false and deceptive means to collect a debt, in  
12 violation of 15 U.S.C. § 1692e(10).  
13

14           25. Defendants used unfair and unconscionable means to collect a debt, in  
15 violation of 15 U.S.C. § 1692f.  
16

17           26. Defendants failed to send Plaintiff an initial letter within five days of its  
18 initial contact with Plaintiff as required by law, in violation of 15 U.S.C. § 1692g(a).  
19

20           27. The foregoing acts and omissions of the Defendants constitute numerous  
21 and multiple violations of the FDCPA, including every one of the above-cited  
22 provisions.  
23

24           28. Plaintiff is entitled to damages as a result of the Defendants' violations.

25                                   **PRAYER FOR RELIEF**  
26

27           WHEREFORE, Plaintiff prays that judgment be entered against the Defendants as  
28 follows:

1 A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the  
2 Defendants;

3  
4 B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A)  
5 against the Defendants;

6  
7 C. Costs of litigation and reasonable attorneys' fees pursuant to 15 U.S.C.  
8 § 1692k(a)(3) against the Defendants;

9 D. Punitive damages; and

10 E. Such other and further relief as may be just and proper.  
11

12 **TRIAL BY JURY DEMANDED ON ALL COUNTS**  
13

14 DATED: September 10, 2014

TRINETTE G. KENT

15  
16 By: /s/ Trinette G. Kent  
17 Trinette G. Kent, Esq.  
18 Lemberg Law, LLC  
19 Attorney for Plaintiff, Robert Ewell  
20  
21  
22  
23  
24  
25  
26  
27  
28